

## **CHAPTER 4-12-08 COMPETITIVE SOLICITATION METHODS**

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### **4-12-08-01. Competitive solicitation methods.**

1. Commodities and services will be procured through a competitive solicitation method unless competitive solicitation is not required by state law or circumstances exist under which competition can be limited or waived in accordance with North Dakota Century Code section 54-44.4-05 and these rules.
2. The state procurement office will establish policies, procedures, guidelines, and standards for the purchase of commodities and services, based upon dollar value thresholds established by the director pursuant to North Dakota Century Code sections 54-44.4-02 and 54-44.4-11.
3. Depending upon the value and complexity of commodities or services to be purchased, the state procurement office and each purchasing agency, in accordance with guidelines issued by the state procurement office, may issue solicitations by one of the following methods:
  - a. Small purchase procedures, including an informal competitive process;
  - b. Competitive sealed bids;
  - c. Competitive sealed proposals; or

- d. Multistep competitive process.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-11

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-10, 54-44.4-11

**4-12-08-02. Small purchases.**

1. Extremely low-value purchases, including purchases made using a purchasing card, will be made using adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the solicitation of only one bid or proposal. The procurement officer will rotate vendors solicited on an equitable basis.
2. For small purchases between the threshold for extremely low-value purchases and formal sealed competition, informal competition should be obtained and no less than three vendors should be solicited, insofar as practical, to submit oral or written bids or proposals.
3. Vendors that are not approved under North Dakota Century Code section 54-44.4-09 may be solicited.
4. All responses will be recorded and placed in the procurement file.
5. After application of North Dakota Century Code section 44-08-01, an award shall be made to the responsible vendor offering the lowest responsive bid or most advantageous proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-11

**4-12-08-03. Competitive sealed bidding.**

1. Invitation for bids will be issued and will include a purchase specification or statement of work and all contractual terms and conditions applicable to the procurement.
2. Notice of the solicitation will be made in accordance with section 4-12-08-06.
3. At the specified date and time, a public bid opening will be held and each bid received will be opened and read.
4. A listing of the bidders' names and their responses must be prepared, including any responses declining to submit a bid and those bids

received late. The record of bidders' names, all the bids, and tabulation sheets form part of the procurement file.

5. The procurement file becomes public upon the bid opening.
6. No discussions or negotiations with bidders are permitted after the opening of bids. Award is to be made to the responsible vendor with the lowest responsive bid, based strictly on the criteria set forth in the invitation for bids.
7. The procurement officer may reject all bids or negotiate for a lower price with the successful bidder as provided in North Dakota Century Code section 54-44.4-05.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09

#### **4-12-08-04. Competitive sealed proposals.**

1. The following types of commodities and services, for which the use of competitive sealed bidding is either not practicable or advantageous to the state, may be procured by competitive sealed proposals without a written determination by the procurement officer:
  - a. Services;
  - b. Information technology as defined in North Dakota Century Code section 54-59-01; and
  - c. Equipment.
2. Request for proposals will be issued and must include a purchase specification or statement of work, all contractual terms and conditions applicable to the procurement, and the relative importance of price and other factors or subfactors, if any.
3. Notice of the solicitation will be made in accordance with section 4-12-08-06.
4. At the specified date and time, each proposal will be opened in a manner to avoid disclosure of the contents to competing offerors. The openings may be made public at the discretion of the purchasing agency, as indicated in the request for proposal. If a public opening is held, only the names of offerors that submitted proposals can be revealed at the opening.
5. A listing of the offerors' names must be prepared, including any responses declining to submit a proposal and those proposals received

late. The record of offerors' names, all the proposals, and tabulation sheets form part of the procurement file.

6. The procurement file becomes public when a notice of intent to award is issued.
7. After the initial evaluation of proposals, the procurement officer or proposal evaluation committee may meet to discuss or evaluate proposals or hold discussions with those offerors determined to be reasonably susceptible of being selected for award. A motion may be made to close the open meeting to prevent disclosure of any information derived from proposals submitted by competing offerors. Written records of these meetings will become open records after an award of a contract has been made.
8. During the evaluation period, only the procurement officer and others specifically authorized by the procurement officer may transmit technical or other information and conduct discussions with prospective contractors. Discussions and negotiations must be conducted in accordance with chapter 4-12-12. These discussions are for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. In conducting discussions, any information derived from proposals submitted by competing offerors shall not be disclosed.
9. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. There must be a cutoff for the submission of revised proposals and final offers.
10. After proposals have been evaluated and the successful vendor selected, notice of intent to award must be promptly issued to all offerors that submitted proposals. Notice can be made by mail, facsimile, or electronic means. Upon issuance of this notice, the procurement file becomes an open record.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 44-04-19.2, 54-44.4-04, 54-44.4-10

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-10

#### **4-12-08-05. Multistep solicitations.**

1. Solicitations for commodities or services may be a multistep process, in which an initial solicitation for unpriced technical bids or proposals may be used to develop a shortlist of qualified vendors and a subsequent solicitation may be limited only to those vendors that qualified for the shortlist.

2. The multistep sealed solicitation method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award.
3. During the first phase of a multistep sealed solicitation while evaluating unpriced technical bids or proposals, the procurement officer may have discussions with vendors or hold a conference of all potential bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-06

#### **4-12-08-06. Notice of competitive sealed solicitations.**

1. When making purchases over the amount established for small purchases, state agencies and institutions will send notice of the solicitation to vendors on the bidders list of approved vendors for the commodity or service being purchased, unless a written determination is made to limit competition.
2. Notice of the solicitation may be made by mail, facsimile, or electronic means. The notice must include the purchasing agency, a brief description of the commodity or service being procured, instructions for obtaining the solicitation, and the deadline for receipt of bids or proposals.
3. The purchasing agency may also elect to use a means of public notice, electronic posting, or send notice to vendors that are not on the bidders list.
4. A record of the notice will be made, including a list of the vendors who were sent notice and any vendors that requested the solicitation or notice provided by other means.
5. Notice shall be given in sufficient time for potential bidders or offerors to prepare bids or proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**4-12-08-07. Approved vendor registration requirements.** All solicitations over the amount established for small purchases must state the requirements for registration as an approved vendor under North Dakota Century Code section 54-44.4-09. The procurement officer may:

1. Require all bidders or offerors to be registered as approved vendors by the deadline established for receipt of bids and proposals;

2. Make a determination to accept bids or proposals from vendors that are not approved and require the successful bidder or offeror to become registered before contract award; and
3. Make a determination that registration with the secretary of state and appointment of an agent for service of process in this state are not required and waive the registration requirement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

#### **4-12-08-08. Questions and clarification.**

1. Any questions or requests for clarification during the solicitation period shall be submitted only to the procurement officer identified on the solicitation document.
2. The procurement officer may establish a deadline for submission of questions or requests for clarification in the solicitation.
3. When the response to the question or request for clarification contains information that is material to the solicitation process that cannot be answered by directing the potential bidder or offeror to a specific section within the solicitation document, the procurement officer will prepare a written response that must be distributed to all potential bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-08-09. Solicitation amendment - Extension of solicitation opening time - Cancellation of solicitations.**

1. Before the opening of bids or proposals, a solicitation may be amended, or time for opening may be extended, upon the procurement officer's determination that the extension or amendment is in the state's best interest. All potential bidders or offerors known to have copies of the solicitation shall be notified of the amendment or extension.
2. Bidders or offerors may be required to acknowledge receipt of the solicitation amendment in writing.
3. Before the opening of bids or proposals, a solicitation may be canceled in whole or in part if the procurement officer determines that cancellation is in the best interest of the state. All potential bidders or offerors known to have copies of the solicitation shall be notified

of the cancellation. Bids or proposals may be returned upon request. Reasons for cancellation include:

- a. The state no longer requires the commodities or services;
- b. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable; or
- c. Sufficient funds are not available to pay for the procurement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-08-10. Presolicitation, prebid, or preproposal conferences and site inspections.**

- 1. A presolicitation conference may be held prior to issuing a competitive sealed solicitation to obtain comments and suggestions about the draft solicitation. The purchasing agency may invite specific selected potential bidders or offerors or provide public notice of the presolicitation conference. Attendance at such conference may not be made mandatory as a condition for submitting a bid or proposal.
- 2. A prebid or preproposal conference or site inspection may be scheduled in a solicitation to be conducted prior to the submission of sealed bids, sealed proposals, or unpriced technical offers in response to a multistep process. Adequate notice of the conference must be given to all potential bidders or offerors.
  - a. The prebid or preproposal conference or site inspection may be made mandatory as a prerequisite for submitting a bid or proposal if the information provided at the conference is necessary to adequately prepare a bid or proposal and cannot be otherwise provided to prospective bidders or offerors.
  - b. If attendance is made mandatory in the solicitation, only those bidders or offerors in attendance are eligible to submit bids or proposals.
  - c. After the prebid or preproposal conference or site inspection, questions raised and answers along with any changes made to the solicitation must be disseminated to potential bidders or offerors through a solicitation amendment. If attendance at the conference

or site inspection was made mandatory, notice of the amendment may be limited to eligible bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-08-11. Samples.**

1. The purchasing agency may require in the solicitation that bidders or offerors submit representative samples of the commodity being offered, at no cost to the state, to ensure compliance with the specifications. Such samples may be subject to examination and testing by the purchasing agency.
2. Samples of the successful bidder or offeror may be retained for comparison to commodities delivered under contract.
3. Upon request of the bidder or offeror, samples not destroyed by examination or testing will be returned at the expense of the bidder or offeror. If the bidder or offeror does not request return of the sample, the sample will become property of the state.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-06

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-08-12. Receiving sealed bids or proposals.**

1. All sealed bids and sealed proposals received at the place designated in the solicitation will be secured and held unopened until the date and time specified in the solicitation for opening of bids or proposals.
2. As bids and proposals are received, the outer envelope will be annotated with the date and time of receipt.
3. If the person delivering a sealed bid or proposal requests a receipt, the purchasing agency will provide a written receipt confirming the identification of the bid or proposal and the time of receipt.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-08-13. Late bids or proposals.**

1. Sealed bids and proposals that are delivered late will not be accepted for consideration, unless the delay is due to the error of the purchasing



agency and discovered before selection of the successful bidder or offeror.

2. The vendor will be promptly sent written notice of rejection.
3. The procurement officer may retain the late bid or proposal in the procurement file, return the late bid or proposal, or notify the vendor to make arrangements for pickup of the late bid or proposal by a specified date.
4. If the late bid or proposal was returned, a record of the return must be made and placed in the procurement file.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10